

# HOUSE BILL 250

P2

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CF SB 130

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By: **Delegates Morhaim, Bobo, Cane, Glenn, Hecht, Heller, Hixson, Hubbard, Lafferty, Lee, Levi, Montgomery, Nathan-Pulliam, Oaks, Reznik, Shewell, Stocksdale, Tarrant, V. Turner, ~~and Walker~~ Walker, and Kramer**

Introduced and read first time: January 25, 2010  
Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 3, 2010

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement – Minority Business Enterprises – ~~Reciprocal~~ Certification**  
3 **Process**

4 FOR the purpose of requiring the Board of Public Works to adopt regulations to  
5 ~~recognize and accommodate, for the purpose of certification under the State~~  
6 ~~minority business enterprise program, minority business enterprises that~~  
7 ~~receive~~ promote and facilitate certification under the State minority business  
8 enterprise program of minority business enterprises that have received  
9 certification from a certain federal agency or ~~from a~~ county government ~~in the~~  
10 State that uses a certification process substantially similar to the State's  
11 certification process; requiring the Board to keep certain records and submit a  
12 certain annual report to the General Assembly about the certification of certain  
13 minority business enterprises; and generally relating to a ~~reciprocal~~  
14 certification process for certain minority business enterprises.

15 BY repealing and reenacting, with amendments,  
16 Article – State Finance and Procurement  
17 Section 14–303  
18 Annotated Code of Maryland  
19 (2009 Replacement Volume)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – State Finance and Procurement**

4 14–303.

5 (a) (1) (i) In accordance with Title 10, Subtitle 1 of the State  
6 Government Article, the Board shall adopt regulations consistent with the purposes of  
7 this Division II to carry out the requirements of this subtitle.

8 (ii) The Board shall keep a record of the number of waivers  
9 requested and the number of waivers granted each year under subsection (b)(8) of this  
10 section and submit a copy of the record to the General Assembly on or before October 1  
11 of each year, in accordance with § 2–1246 of the State Government Article.

12 **(III) THE BOARD SHALL KEEP A RECORD OF THE**  
13 **AGGREGATE NUMBER AND THE IDENTITY OF MINORITY BUSINESS ENTERPRISES**  
14 **THAT RECEIVE CERTIFICATION UNDER THE ~~RECIPROCAL~~ PROCESS**  
15 **ESTABLISHED BY THE BOARD UNDER SUBSECTION (B)(1) OF THIS SECTION AND**  
16 **SUBMIT A COPY OF THE RECORD TO THE GENERAL ASSEMBLY ON OR BEFORE**  
17 **OCTOBER 1 OF EACH YEAR, IN ACCORDANCE WITH § 2–1246 OF THE STATE**  
18 **GOVERNMENT ARTICLE.**

19 (2) The regulations shall establish procedures to be followed by units,  
20 prospective contractors, and successful bidders or offerors to maximize notice to, and  
21 the opportunity to participate in the procurement process by, a broad range of  
22 minority business enterprises.

23 (b) These regulations shall include:

24 (1) (I) provisions designating one STATE agency to certify and  
25 decertify minority business enterprises for all units through a single process that  
26 meets applicable federal requirements; AND

27 **(II) FOR THE PURPOSE OF CERTIFICATION UNDER THIS**  
28 **SUBTITLE, PROVISIONS THAT ~~RECOGNIZE AND ACCOMMODATE MINORITY~~**  
29 **~~BUSINESS ENTERPRISES THAT RECEIVE~~ PROMOTE AND FACILITATE**  
30 **CERTIFICATION OF MINORITY BUSINESS ENTERPRISES THAT HAVE RECEIVED**  
31 **CERTIFICATION FROM THE U.S. SMALL BUSINESS ADMINISTRATION OR A**  
32 **COUNTY GOVERNMENT IN THIS STATE THAT USES A CERTIFICATION PROCESS**  
33 **SUBSTANTIALLY SIMILAR TO THE PROCESS ESTABLISHED IN ACCORDANCE WITH**  
34 **ITEM (I) OF THIS ITEM;**

1           (2) a requirement that the solicitation document accompanying each  
2 solicitation set forth the expected degree of minority business enterprise participation  
3 based, in part, on:

4                   (i) the potential subcontract opportunities available in the  
5 prime procurement contract; and

6                   (ii) the availability of certified minority business enterprises to  
7 respond competitively to the potential subcontract opportunities;

8           (3) a requirement that the unit provide a current list of certified  
9 minority business enterprises to each prospective contractor;

10           (4) provisions to ensure the uniformity of requests for bids on  
11 subcontracts;

12           (5) provisions relating to the timing of requests for bids on  
13 subcontracts and of submission of bids on subcontracts;

14           (6) provisions designed to ensure that a fiscal disadvantage to the  
15 State does not result from an inadequate response by minority business enterprises to  
16 a request for bids;

17           (7) provisions relating to joint ventures, under which a bidder may  
18 count toward meeting its minority business enterprise participation goal, the minority  
19 business enterprise portion of the joint venture;

20           (8) consistent with § 14-302(a)(6) of this subtitle, provisions relating  
21 to any circumstances under which a unit may waive obligations of the contractor  
22 relating to minority business enterprise participation;

23           (9) provisions requiring a monthly submission to the unit by minority  
24 business enterprises acknowledging all payments received in the preceding 30 days  
25 under a contract governed by this subtitle;

26           (10) a requirement that a unit shall verify and maintain data  
27 concerning payments received by minority business enterprises, including a  
28 requirement that, upon completion of a project, the unit shall compare the total dollar  
29 value actually received by minority business enterprises with the amount of contract  
30 dollars initially awarded, and an explanation of any discrepancies therein;

31           (11) a requirement that a unit verify that minority business enterprises  
32 listed in a successful bid are actually participating to the extent listed in the project  
33 for which the bid was submitted;

1 (12) provisions establishing a graduation program based on the  
2 financial viability of the minority business enterprise, using annual gross receipts or  
3 other economic indicators as may be determined by the Board;

4 (13) a requirement that a bid or proposal based on a solicitation with an  
5 expected degree of minority business enterprise participation identify the specific  
6 commitment of certified minority business enterprises at the time of submission;

7 (14) provisions promoting and providing for the counting and reporting  
8 of certified minority business enterprises as prime contractors; and

9 (15) other provisions that the Board considers necessary or appropriate  
10 to encourage participation by minority business enterprises and to protect the  
11 integrity of the procurement process.

12 (c) The regulations adopted under this section shall specify that a unit may  
13 not allow a business to participate as if it were a certified minority business enterprise  
14 if the business's certification is pending.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2010.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.